

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICHAEL A. WALTON,

Plaintiff,

-v.-

JOHN DOE, a fictitious name, true name  
unknown, and LINE TRUCKING CORP.,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>5/25/2023</u>

22 Civ. 7589 (JHR)

ORDER

JENNIFER H. REARDEN, District Judge:

On March 7, 2023, the Court ordered Defendant to show cause why the case should not be remanded to the Supreme Court of New York, Bronx County. ECF No. 18 (Order to Show Cause). Specifically, the Court found that the record, including the Notice of Removal and Complaint, failed to “establish[ ] the existence of the requisite diversity of citizenship between the parties.” Order to Show Cause at 3 (quoting *Durant, Nichols, Houston, Hodgson & Cortese-Costa P.C. v. Dupont*, 565 F.3d 56, 64 (2d Cir. 2009)). The Court also found that the Notice of Removal and Complaint did not adequately allege an amount of controversy exceeding the jurisdictional amount. Order to Show Cause at 3-4. The Court therefore ordered Line Trucking to file an affidavit addressing the citizenship of the parties (at the time of commencement of the state court action and of the Notice of Removal) and the amount in controversy in this case. *Id.* at 4. In addition, the Court stated that if Plaintiff contests diversity jurisdiction, he must “file an affidavit addressing any facts included in Line Trucking’s affidavit or that are otherwise relevant to the diversity analysis. *Id.* at 4-5. Plaintiff was also ordered to indicate in his response to Line Trucking’s submission whether he “intends to amend his Complaint with information regarding the John Doe Defendant’s name and state of citizenship, and if so, why the Court should accept that late amendment.” *Id.* at 4.

On March 21, 2023, Line Trucking filed an opposition to the Order to Show Cause, asserting that “Plaintiff’s Complaint and [an unsworn] Rule 26 disclosure identify Plaintiff as a citizen of the State of Pennsylvania.” ECF No. 20 (Opp.) at 2; *see* ECF No. 19 (Sain Decl.) Exs. A, D. Line Trucking also points to a police report generated after the June 24, 2021 accident that allegedly caused Plaintiff’s injuries, which lists a Pennsylvania address for Plaintiff. Opp. 2; *see* Sain Decl. Ex. F. Moreover, Line Trucking alleges that the John Doe Defendant, whom it identifies as Octavio Diaz, was a “resident and citizen” of Florida at the time of the June 24, 2021 accident. Opp. 1. In support of that allegation, Line Trucking’s principal, Asmara Garcia, attests that, as of the date of Mr. Diaz’s last employment with Line Trucking on or about February 15, 2022—several months before this action was initiated and the Notice of Removal was filed—Mr. Diaz was a resident of Florida. Sain Decl. Ex. G ¶¶ 6-7. Finally, Line Trucking avers that the amount in controversy requirement is satisfied because medical records reflect Plaintiff’s purported “herniation of his cervical spine, repaired by fusion surgery; herniation of his lumbar spine, repaired surgically by a discectomy; a tear of the medial meniscus of his right knee; a tear of the bursa of his right shoulder, causing tendinosis; and injuries to his left knee and shoulder, resulting in tendinosis.” Opp. 3; *see* Sain Decl. Ex. I.<sup>1</sup>

On March 29, 2023, Plaintiff responded to the Order to Show Cause, ECF No. 21 (Pl.’s Resp.), but that filing only addresses Line Trucking’s allegations of citizenship as to “John Doe” Octavio Diaz. Specifically, Plaintiff asserts that Line Trucking fails to establish that Diaz was a citizen of Florida at the time of the filing of the Complaint and the Notice of Removal (or at any other time) and that the Court should remand this action to state court. *Id.* Plaintiff did not respond to Line Trucking’s other jurisdictional allegations (let alone, via an affidavit), nor did

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<sup>1</sup> The Opposition and supporting documents also allege Line Trucking’s citizenship for diversity purposes. *See* Opp. 2; Sain Decl. Exs. E, G, H.

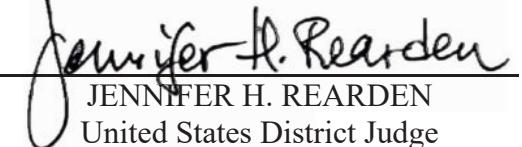
Plaintiff inform the Court whether he “intends to amend his Complaint with information regarding the John Doe Defendant’s name and state of citizenship, and if so, why the Court should accept that late amendment.” Order to Show Cause at 4.

Accordingly, by **June 5, 2023**, Plaintiff shall file an affidavit attesting to his state of citizenship at the time of filing the Complaint and of removal and addressing any facts that are in Line Trucking’s affidavit or that are otherwise relevant to the jurisdictional analysis. Plaintiff shall also explain whether he will seek leave to amend his Complaint to name Mr. Diaz as a Defendant if the Court does not dismiss this action for lack of subject matter jurisdiction.

Moreover, as mentioned in the Order to Show Cause, in a February 6, 2023 joint status letter, the parties noted that a “search [was] underway for [Mr. Diaz’s] current address.” ECF No. 17 (Joint Ltr.) at 3. Neither party has updated the Court on that search. Accordingly, by **June 5, 2023**, the parties shall also complete any outstanding discovery concerning the citizenship of Mr. Diaz.

SO ORDERED.

Dated: May 25, 2023  
New York, New York

  
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JENNIFER H. REARDEN  
United States District Judge